IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6400 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

M P BHABHOR

Versus

STATE OF GUJARAT

Appearance:

MR Niraj Ashar for DM THAKKAR for Petitioner

MR Bhukhari, AGP instructed by RJ OZA for Respondent No. 1, 2

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 09/03/2000

ORAL JUDGEMENT

This petition is filed by the petitioner quashing and setting aside an order dated 28.8.1989 by which certain persons junior to the petitioner came to be promoted to the post of Government Labour Officer Class II and for further direction directing the respondent authorities to pay to the petitioner all consequential benefits.

2. The case of the petitioner was that he was serving as Scrutinizer Class - III in the establishment of Commissioner of Labour - respondent no.2 herein. According to him he was discharging his duties and performing his functions to the utmost satisfaction of the department. From the post of Scrutinizer Class - III there is further promotion of Government Labour Officer Class - II. For promotion to the said post Rules have been framed under proviso to Article 309 of the Constitution of India and Rule 2 provides that appointment to the post of Government Labour Officer Class - II should be made (a) either by promotion of a person of "proved merit and efficiency" from amongst the persons working in the cadres of Superintendent and Scrutinizer under the Commissioner of Labour in the ratio of 1:1 by turn or by (b) direct selection. In the present petition, we are not concerned with direct selection but only with promotion. From the Statutory Rules, it is clear that the petitioner was in the feeder cadre and thus, eligible.

3. The case of the petitioner was that in the list of seniority of Scrutinizer Class - III as on January 1, 1988, he was at Sr.No. 30. S/S.S.V.Shah, S.B.Bijlani and J.W.Christian were at Sr.No. 31,32 and 34 respectively. The petitioner states that to his utter shock and surprise all of them came to be promoted ignoring the legitimate and legal claim of the petitioner. It was also stated in the petition that one Smt.S.D.Bhatt was at Sr.No.33 but she retired in the meanwhile and thus three persons who were junior to him were promoted which was contrary to law.

4. The petitioner has stated in the petition that a criminal case was filed against him and he was placed under suspension. A petition being, S.C.A.No.2508 of 1987 was filed by him in this Court and interim relief was also granted in his favour against the order of suspension. Presumably on account of pendency of criminal case, the petitioner was not promoted. He has further stated that the Additional Sessions Judge, Panch Mahals acquitted him by a judgement and order dated July 15, 1989. The petitioner thereafter made representations on July 19, 1989 and July 31, 1989 which are annexed to the petition. No justice was done to his case and that his how he was constrained to approach this Court.

4. Initially notice was issued and thereafter the petition was admitted. Rule was issued and it was expedited. Today the matter is called out for final

hearing. I have heard Mr.Niraj Ashar for Mr.D.M.Thakker for the petitioner and Mr.R.J.Oza for the respondent. No counter affidavit is filed on behalf of the respondents.

5. The question for my consideration is whether non-promotion of the petitioner to the post of Government Labour Officer Class - II was in accordance with law or not. Looking to the petition, it clearly appears that the petitioner was in feeder cadre. His case, therefore, was required to be considered in accordance with the Statutory Rules for promotion to the post of Government Labour Officer Class - II. According to the petitioner he was at Sr.No.30 whereas three persons who were promoted were at Sr.No.31,32 & 34 respectively. According to him, without considering his case, persons junior to him were promoted. It appears that the case of the petitioner was considered in accordance with the policy of the Government but it was kept in sealed cover in view of the pendency of the criminal case against him. But as stated by the petitioner, he was acquitted by a competent Criminal Court. If an order of acquittal was challenged in superior Court obviously till the disposal of appeal, such procedure will have to be adhered to but if no appeal is filed against acquittal or the appeal is disposed of in favour of the petitioner, then obviously sealed cover is required to be opened and in accordance with the result, a decision will have to be taken.

6. For the foregoing reasons, in my opinion the petition deserves to be allowed and is accordingly allowed. The respondent authorities are directed to open sealed cover if criminal case against the petitioner is finally over and the case is disposed of in favour of the petitioner and to take appropriate decision in accordance with law. Rule is made absolute to the above extent. In the facts and circumstances no orders as to costs.

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